

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

BYRON JEROME HAWKINS	§	
v.	§	CIVIL ACTION NO. 9:06cv206
STATE OF TEXAS, ET AL.	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Plaintiff Byron Hawkins, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged deprivations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Hawkins complained that he was arrested on drug charges in September of 2003, for which he made bail. He was again arrested in February of 2004, and had to make a higher bail. He was subsequently arrested yet again, on charges of failure to appear. After he spent a year in jail, Hawkins says, all of the charges were dismissed. He filed this lawsuit seeking damages for bonding fees, court and lawyer fees, lost wages from work, emotional stress, damages for slander, and damages for false and malicious prosecution.

The defendants were ordered to answer the lawsuit and did so. The Nacogdoches County Sheriff's Department and Sheriff Kerss filed an answer and motion to dismiss, and the City of Nacogdoches Police Department filed a motion to dismiss and motion for summary judgment. The Magistrate Judge converted the motion to dismiss filed by the Sheriff and Sheriff's Department to a motion for summary judgment under Rule 56, Fed. R. Civ. P.

After review of the motions for summary judgment, the Magistrate Judge issued a Report on March 1, 2007, recommending that the motions be granted and that the lawsuit be dismissed. Hawkins received a copy of the Magistrate Judge's Report on March 2, 2007, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings and summary judgment evidence in this cause, as well as the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the motion for summary judgment and motion to dismiss filed by the City of Nacogdoches Police Department (docket no.'s 23 and 25) and the motion to dismiss of the Nacogdoches County Sheriff's Department and Sheriff Thomas Kerss (docket no. 19) are hereby GRANTED. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED with prejudice as to its refiling in federal court. It is further

ORDERED that the Court does hereby decline jurisdiction over the Plaintiff's state-law claims, including but not limited to his claims of malicious prosecution, slander, and emotional distress. Such claims are DISMISSED from the present lawsuit with prejudice as to their refiling in federal court, but without prejudice to the Plaintiff's right to refile these claims in state court. It is further

ORDERED that the statute of limitations on the Plaintiff's state-law claims shall be TOLLED from the date that this lawsuit was filed, September 6, 2006, until 30 days after the date of entry of final judgment, in accordance with 28 U.S.C. §1367. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So **ORDERED** and **SIGNED** this **23** day of **March, 2007**.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge